



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-5171



Judith Brissette
150 State Route 2
Shelburne, NH 03813

Re: The Shelburne Birches Mountain Resort
Shelburne, NH
EPA #2148020

**ADMINISTRATIVE ORDER
No. WD 01-21**

June 13, 2001

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division, to Judith Brissette pursuant to RSA 485:4 and RSA 485:58. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Judith Brissette is an individual having a mailing address of 150 State Route 2, Shelburne, NH 03813.

C. STATEMENTS OF FACTS AND LAW

RSA 485 authorizes DES to regulate public water supplies.

2. RSA 485:3 authorizes DES to adopt drinking water rules which identify contaminants which may have an adverse affect on health, which establish maximum contaminant levels that are acceptable for human consumption, which establish criteria and procedures to assure compliance with such maximum contaminant levels, and which identify criteria and standards to ensure the proper operation and maintenance of water systems. Pursuant to this authority, DES has adopted NH Admin. Rules Env-Ws 300.
3. Judith Brissette is the owner of a water system which serves a resort consisting of 15 motel units and 9 cabins with an estimated population of 60 located on State Route 2 in the community of Shelburne, NH ("Water System"). The Water System is a transient, non-community water system as defined in NH RSA 485:1-a, I and NH Admin. Rule Env-Ws 302.02 (bt).
4. NH Admin. Rule Env-Ws 306.01(b) requires that each transient, non-community water system be subject to a sanitary survey once every five years. The purpose of a sanitary survey is to conduct on-site reviews in order to evaluate the adequacy of the source(s), storage facilities, equipment, operation, and maintenance to produce and distribute safe drinking water.

5. NH Admin. Rule Env-Ws 306.01(e) requires that significant operational or facility deficiencies be corrected within 90 days of the date of inspection.
6. The property upon which the System is located was purchased by Edward Whitcomb in 1998. Prior to that, the property had been unused for several years.
7. On September 2, 1998, a sanitary survey was performed at the Water System by DES personnel. The September 4, 1998, survey report noted the following significant deficiencies:
 - a. The top of the well(s) is/are buried and cannot be located; and
 - b. The system lacks a source sampling tap on the waterline prior to the waterline's entry into the first on-line storage tank.
8. DES has no record of the requested written response to the significant deficiencies identified in the September 4, 1998, sanitary survey report.
9. On May 10, 1999, DES staff visited the Water System to determine what actions had been taken to correct the significant deficiencies. Finding no corrective action had been undertaken, staff reminded Mr. Whitcomb of the need to retain a water system professional to determine the location and condition of the well(s) and to install the necessary source tap(s).
10. On or about June 2, 1999, a Letter of Deficiency ("June 1999 LoD") was issued to the Water System. The June 1999 LoD addressed the two significant deficiencies identified in the September 4, 1998, survey report and requested the Water System representative to do the following:
 - a. By June 21, 1999, retain the services of a well/pump company to correct the Water System's significant deficiencies; and
 - b. By July 9, 1999, notify DES in writing that the required work had been completed.
11. DES has no record of the requested written response to the June 1999 LoD
12. DES issued Administrative Order WD 99-17 (the "Order") to Mr. Whitcomb on September 10, 1999, for the Water System's failure to correct significant deficiencies identified in the September 4, 1998 sanitary survey report. Mr. Whitcomb received the Order on or about September 21, 1999, as evidenced by the signed postal receipt.
13. DES received a letter from Attorney Moynihan of Moynihan & Michalick on October 12, 1999, which stated that the current owner of the property, Judith Brissette, wished to appeal the Order and would be filing an appeal with the NH Water Council. The letter informed DES that Mr. Whitcomb conveyed the property to Ms. Brissette by quit claim deed in June 1999.
14. The NH Water Council summarily dismissed the appeal because the appeal was improperly perfected. This Administrative Order is being reissued to the current owner of the Water System.

D. DETERMINATION OF VIOLATIONS

1. The Water System has violated NH Admin. Rule Env-Ws 306.01(e) by failing to correct the significant deficiencies identified during the September 2, 1998, sanitary survey within 90 days of the inspection.
2. As owner of the Water System, Judith Brissette is responsible for the violations noted herein.

E. ORDER

Based on the above findings, DES hereby orders Judith Brissette as follows:

1. By June 30, 2001, retain the services of a currently-licensed well driller, pump installer, or water system designer to inspect the Water System and address the system's outstanding survey deficiencies related to the lack of source tap(s) and buried water supply source(s).
2. By July 16, 2001, submit to DES a copy of an executed contract with the retained well driller, pump installer, or system designer that, at a minimum, indicates that the retained person/company is to (a) physically locate and examine all water supply sources, and (b) submit to DES for review and approval a report that gives the location, description, and status (active or inactive) of each source, as well as recommendations and an implementation schedule to correct any water supply source deficiencies discovered during the process of locating and inspecting the water supply source(s).
3. By August 17, 2001, submit to DES for review and approval a copy of the report required in the preceding paragraph.
4. By August 31, 2001, install a source sampling tap on each active well's waterline prior to the waterline's entry into the first on-line storage tank. All source taps must be located at least 12 inches above the pumphouse floor. Once the source tap(s) is/are installed, notify DES in writing of the installation.
5. By August 31, 2001, physically disconnect from the water system any inactive water supply source, and physically disconnect and seal any inactive, abandoned water supply source in accordance with NH Admin. Rule We 604.
6. Complete all recommended water supply source improvements according to the implementation schedule contained in the report required by Items E.2. and E.3. above, as approved by DES.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Linda Magoon, Program Specialist
Department of Environmental Services
6 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Voice: (603) 271-0672
Fax: (603) 271-3490


F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Judith Brissette of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485:58 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Judith Brissette remains obligated to comply with all applicable requirements, in particular the need to correct all significant deficiencies identified in sanitary surveys and to comply with applicable drinking water statutes and rules. DES will continue to monitor Judith Brissette's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Coos County Registry of Deeds so as to run with the land.


COPY
Harry T. Stewart, P.E. Director
Water Division


COPY
Robert W. Varney, Commissioner

Certified Mail/RRR: 7099 3400 0002 9772 0285

cc: ✓ Gretchen Rule, DES Enforcement Coordinator
Public Information Officer, DES PIP Office
NH AGO
Coos County Registry of Deeds
Shelburne Board of Selectmen
US EPA, Region 1